

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate)	RM-8117, RM-8030
Future Development of SMR Systems)	RM-8029
in the 800 MHz Frequency Band)	
)	
Implementation of Sections 3(n))	GN Docket No. 93-252
and 332 of the Communications Act)	
Regulatory Treatment of Mobile)	
Services)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act --)	
Competitive Bidding)	

To: The Commission

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COMMENTS
OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.
AND THE
TELEPHONE MAINTENANCE FREQUENCY ADVISORY COMMITTEE

Submitted by:

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Telephone Maintenance
Frequency Advisory Committee

February 15, 1996

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S U M M A R Y

The Industrial Telecommunications Association, Inc. ("ITA"), and the Telephone Maintenance Frequency Advisory Committee ("TELFAC") are greatly concerned with the overall direction reflected in the 800 MHz Decision and Proposal. ITA and TELFAC disapprove of the Commission's clear predisposition to auction the 150 General Category channels.

The decision to redesignate the General Category channels exclusively for SMR purposes will have a very significant adverse impact on industrial and business entities that, as a practical necessity, must operate their own communications networks. The redesignation will severely limit the communications options available to non-SMR licensees whose requirements cannot be satisfied by commercial carriers. There must be sufficient spectrum available to accommodate these non-SMR requirements.

In its 800 MHz Decision and Proposal, the Commission tentatively concludes that the General Category channels should be converted to geographic area licensing. The Commission also concludes that most of the systems to be licensed on the General Category channels will operate as Commercial Mobile Radio Service providers. With these two decisions, the Commission has set the stage for auctioning the General Category channels.

The Joint Commenters continue to believe that a sizeable proportion of non-SMR entities require the use of the General Category channels for their vital internal communications requirements. Converting these General Category channels to geographic area licensing is directly at odds with the operation of private internal communications systems because the needs of private users do not parallel pre-defined geographic boundaries. Therefore, the Joint Commenters strongly oppose the licensing of the General Category channels using EA service areas.

In other ways as well, the interests of the non-SMR licensees that make heavy use of the General Category channels must be protected.

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COMMENTS
OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.
AND THE
TELEPHONE MAINTENANCE FREQUENCY ADVISORY COMMITTEE

The Industrial Telecommunications Association, Inc. ("ITA"), and the Telephone Maintenance Frequency Advisory Committee ("TELFAC"), pursuant to the Federal Communications Commission's First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submit these Comments responsive to the Commission's proposal.¹

¹ First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (FCC 95-501), PR Docket No. 93-144, GN Docket No. 93-252 and PP Docket No. 93-253, adopted

I. PRELIMINARY STATEMENT

1. ITA, formerly the Special Industrial Radio Service Association, Inc. (SIRSA), is an association organized under the laws of the District of Columbia. ITA is the Commission's certified frequency coordinator for the Special Industrial Radio Service and the Industrial/Land Transportation 421-430 MHz and 800/900 MHz frequency pools. ITA also coordinates channels from the 800 MHz General Category pool for those entities: (a) eligible to become Industrial/Land Transportation licensees; (b) wishing to expand trunked systems; or (c) consolidating conventional systems into a trunked system. ITA coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated to the Special Industrial Radio Service and the enumerated 800/900 MHz frequency pools.

2. ITA enjoys the support of a membership that includes more than 7,600 private land mobile radio communications licensees and the following trade associations:

Alliance of Motion Picture and Television Producers
American Mining Congress
Associated Builders & Contractors, Inc.

December 15, 1995, released December 15, 1995, (scheduled to be published in the Federal Register dated February 16, 1996). ITA and TELFAC are hereinafter referred to as the "Joint Commenters."

Florida Citrus Processors Association
Florida Fruit & Vegetable Association
National Aggregates Association
National Food Processors Association
National Propane Gas Association
National Ready-Mixed Concrete Association
National Utility Contractors Association
New England Fuel Institute
United States Telephone Association

3. The Telephone Maintenance Frequency Advisory Committee is an unincorporated association representing all licensees in the Telephone Maintenance Radio Service. TELFAC is governed by a council of licensee representatives elected by members of the Telephone Maintenance Radio Service. The TELFAC Council is composed of representatives from Bell Communications Research, Ohio Bell Telephone Company, United States Telephone Association, Bell Atlantic - New Jersey, Inc., Rock Hill Telephone Company, MCI Telecommunications Corporation, and Pacific Bell. TELFAC is the Federal Communications Commission's certified frequency advisory committee for the Telephone Maintenance Radio Service.

II. COMMENTS

Use of the General Category Channels

4. In general, the Joint Commenters are greatly concerned with the overall direction reflected in the 800 MHz Decision and Proposal. In particular, the Joint Commenters disapprove of the Commission's clear predisposition to auction the 150 General Category channels. Less than 16 months ago, the Commission went

on record as follows:

General Category Channels are expressly designated for use not only by SMR licensees, but also by Public Safety licensees and PMRS providers in the Industrial/Land Transportation and Business service categories. Because we have allocated these channels for extensive PMRS as well as CMRS use, we determined in the *Competitive Bidding Second Report and Order* that these channels are not subject to competitive bidding. [Footnote omitted.] Consequently, we are concerned that continuing to allow SMR applications for these channels could result in a scarcity of frequencies for PMRS use.²

5. In the space of 16 months, the Commission has fundamentally reversed its view of the General Category channels. In 1994, the Commission noted that these channels are not subject to competitive bidding. Now, the 800 MHz Decision and Proposal reflects a pronounced predisposition toward auctioning the General Category channels. Similarly, in 1994, the Commission was concerned that allowing SMR use of the General Category channels could result in a scarcity of frequencies for private mobile radio systems. Now, the Commission has already elected to designate these channels exclusively for SMR use.³

² Further Notice of Proposed Rule Making (FCC 94-271), PR Docket No. 93-144 and PP Docket No. 93-253, adopted October 20, 1994, released November 4, 1994, paragraph 52.

³ While the Joint Commenters object to the redesignation and intends to seek reconsideration of this aspect of the 800 MHz Decision and Proposal, the item has not yet been published in the Federal Register. This situation produces an awkward sequence, in that commenters are being asked to comment on the auctioning of General Category channels without yet having the opportunity to contest the redesignation of these channels for SMR use.

6. Certainly, the usage pattern for the General Category channels has not changed dramatically in the past 16 months.⁴ Nor has the scarcity of frequencies for private mobile radio systems been alleviated.⁵ The Joint Commenters and their industry members are puzzled and disappointed by this reversal of the Commission's views.

7. The available data does not support the Commission's conclusion that "the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service."⁶

⁴ In making this statement, ITA is ignoring the thousands of applicants who, prompted by promises on late-night television of potential riches, filed speculative applications for the General Category channels. It is widely recognized that the vast majority of these speculators, if not all of them, lacked any intent to construct and operate a bona fide radio system. Rather, it was the lure of possible wealth that caused them to file their applications.

⁵ The experience of Exxon Communications Company illustrates the role which the General Category channels play in fulfilling critical communications requirements. Exxon operates a 20-channel trunked 800 MHz system in its Baton Rouge, Louisiana oil refinery complex. The system is currently loaded with more than 2,000 mobile and portable units. Due to the extreme loading, Exxon encounters severe problems during period of heavy use, e.g., plant "turnarounds" or emergencies. In trying to meet future requirements, Exxon's only practical option is to add additional portable radios to the system. There are no additional 800 MHz private land mobile channels available for licensing in the Baton Rouge area. Five of the twenty channels in use at Exxon's Baton Rouge refinery are from the General Category pool. If Exxon is forced to relocate off of these channels, it stands to lose 25% of the capacity now available on this critical system.

⁶ 800 MHz Decision and Proposal, paragraph 137.

More than 3,450 non-commercial licensees operate systems in the General Category Pool. This compares with approximately 11,100 SMR licenses, including a very sizeable proportion of systems licensed to speculators. Even including all of the licenses held by speculative applicants, one-fourth of all the licenses issued for the General Category channels are for non-SMR systems.

8. The decision to redesignate the General Category channels exclusively for SMR purposes will have a very significant adverse impact on industrial and business entities that, as a practical necessity, must operate their own communications networks.⁷ The redesignation will severely limit the communications options available to non-SMR licensees whose requirements cannot be satisfied by commercial carriers. There must be sufficient spectrum available to accommodate these non-SMR requirements. The redesignation of the General Category channels greatly exacerbates the scarcity of private mobile channels that the Commission found when drafting its 1994 Further Notice of Proposed Rule Making in this same proceeding.

⁷ To illustrate, the Joint Commenters are aware of one major power utility company that made a strategic decision to rely on their own private land mobile system for "life-line" communications after Hurricane Hugo destroyed the radio systems operated by common carriers in the southeastern United States. The Joint Commenters understand that this utility company will be participating in this proceeding.

Protection for Non-SMR Systems in the Upper Block of 200 Channels

9. The Joint Commenters believe it is also important to note that not all of the systems licensed to use frequencies in the upper block of 200 channel pairs are SMR systems. The upper block was allocated exclusively for SMR use in 1988.⁸ Before that time, the channels were available equally for SMR as well as trunked, non-SMR systems. As a result, a mixture of both SMR and non-SMR systems currently occupy the upper block. The 800 MHz Decision and Proposal seems to overlook this fact.⁹ The Joint Commenters strongly urge the Commission to extend all of the relocation provisions that apply to incumbent SMR systems to non-SMR incumbents as well.

Introduction of Geographic Licensing for the General Category Channels

10. In its 800 MHz Decision and Proposal, the Commission tentatively concludes that the General Category channels should be converted to geographic area licensing. The Commission also concludes that most of the systems to be licensed on the General Category channels will operate as Commercial Mobile Radio Service providers. With these two decisions, the Commission has set the

⁸ Report and Order, Docket No. 86-404, 3 FCC Rcd. 1838 (1988).

⁹ See, e.g., paragraph 272, where the proposal states that actual relocation costs should include "SMR equipment." See also paragraph 279, which suggests that the issue of comparable facilities is limited to "comparable facilities in the 800 MHz SMR context."

stage for auctioning the General Category channels.

11. The Joint Commenters continue to believe that a sizeable proportion of non-SMR entities require the use of the General Category channels for their vital internal communications requirements. Converting these General Category channels to geographic area licensing is directly at odds with the operation of private internal communications systems because the needs of private users do not parallel pre-defined geographic boundaries. Therefore, the Joint Commenters strongly oppose the licensing of the General Category channels using EA service areas.

Relocation of Incumbents in the General Category and Lower 80 Channel Blocks

12. The Joint Commenters are greatly concerned with the fate of non-SMR systems licensed on the lower block of 80 channels and on the General Category channels. The Commission has tentatively concluded that SMR operators using the lower 80 channels and the General Category channels should not be subject to mandatory relocation. For reasons that are not explained, the Commission appears reluctant to grant the same rights to non-SMR licensees. The Joint Commenters fail to appreciate the distinction.

13. It is not apparent why SMR operators should be insulated from mandatory relocation while non-SMR licensees may

be required to relocate. The Joint Commenters therefore strongly oppose the mandatory relocation of non-SMR systems currently operating on the lower 80 channels and the General Category channels.

Definition of Relocation Costs

14. The Joint Commenters agree that the term "actual relocation costs" should include the incumbent systems' existing equipment, towers and/or modifications, back-up power equipment, engineering costs, installation, system testing, FCC filing costs, site acquisition and civil works, zoning costs, training, disposal of old equipment, test equipment, spare equipment, project management, and site lease negotiation. The Joint Commenters agree, further, that relocation costs should not be limited to the above cost items because, in individual cases, there are likely to be a variety of other costs that arise. For example, in any number of cases, it may be necessary to operate both the old and new systems for a period of time until the reliability of the new system is tested and confirmed.

Definition of Comparable Facilities

15. The Joint Commenters believe that the threshold definition of "comparable facilities" is "facilities that are equal to or superior to the existing facilities." Accordingly, the term "comparable facilities" should include an equal number

of channels in the 800 MHz range; the same bandwidth; a level of protection from co-channel interference that is comparable to the protection resulting from the technical criteria that served as the basis for licensing the incumbent's original system; relocation of the incumbent licensee's entire system, not merely those frequencies desired by a particular EA licensee; and the incumbent's "retuned" system providing at least the same performance as the incumbent's existing system operating at the same antenna height with the same power.

16. The Joint Commenters urge the Commission to be especially careful to define the incumbent relocation program in such a way that EA licensees are required to adhere to the full intent and meaning of the channel assignment policies which governed the licensing of the incumbents' systems. For example, the Joint Commenters urge the Commission to mandate that EA licensees must honor the separation standards that apply in special cases, such as the 105-mile geographic separation standard applicable to systems located on specified mountaintop sites in California and Washington.¹⁰ The new facilities established by retuned licensees must be assured of adequate interference protection. At a minimum, the level of interference protection that results after retuning must be comparable to the protection experienced with the existing facilities.

¹⁰ Section 90.621(b), 47 C.F.R. 90.621(b) (1995).

Reimbursement Rights

17. The Joint Commenters support the proposal to grant reimbursement rights to EA licensees who negotiate a relocation agreement that benefits other EA licensees.

Incumbent Negotiation Plan

18. The Joint Commenters do not believe that the negotiation phases adopted by the Commission serve the public interest. The Joint Commenters object to the one-year voluntary period and two-year mandatory period established for negotiations. The Joint Commenters believe there should be an initial voluntary negotiation period that extends for two years, followed by a one-year mandatory period.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. and the Telephone Maintenance Frequency Advisory Committee respectfully submit these Comments and urge the Federal Communications Commission to act in accordance with the views expressed herein.

**INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.**

By: 

Mark E. Crosby
President and Managing
Director

**TELEPHONE MAINTENANCE FREQUENCY
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